

1 UNITED STATES BANKRUPTCY COURT

2 DISTRICT OF NEVADA

3 LAS VEGAS, NEVADA

4 In re: THE RHODES COMPANIES,) E-Filed: 02/03/10
5 LLC,)
6 Debtor.) Case No.
7) BK-S-09-14814-LBR
8) Chapter 11
9
10

11 TRANSCRIPT OF PROCEEDINGS
12 OF
13 HEARING RE: SECOND AMENDED MODIFIED PLAN, NO. 930
14 AND
15 HEARING RE: OBJECTION, NO. 930
16 AND
17 MOTION FOR RELIEF FROM STAY,
18 GLOBAL SETTLEMENT,
19 AND DECLARATION OF PAUL D. HUYGENS IN SUPPORT THEREOF
20 WITH PROPOSED ORDER, NO. 945
21 VOLUME 1
22 BEFORE THE HONORABLE LINDA B. RIEGLE
23 UNITED STATES BANKRUPTCY JUDGE

24 Thursday, January 21, 2010

25 9:30 a.m.

26 Court Recorder: Liberty Ringor

27 Proceedings recorded by electronic sound recording;
28 transcript produced by transcription service.

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1 (Court convened at 09:37:57 a.m.)

2 THE CLERK: Bankruptcy court is now in session.

3 THE COURT: Be seated.

4 (Colloquy not on the record.)

5 THE COURT: Rhodes Companies.

6 Appearances, please.

7 MR. LARSON: Good morning, your Honor. Zach Larson
8 on behalf of Rhodes Companies.

9 MR. DUBLIN: Good morning, your Honor. Phil Dublin
10 and Meredith Lahaie, Akin, Gump, Strauss, Hauer & Feld, on
11 behalf of the First Lien Steering Committee.

12 MS. MARSHALL: Janiece Marshall on behalf of
13 Stanley Consultants.

14 MR. LEATHAM: Nile Leatham also for the
15 First Lien Steering Committee.

16 MR. MacROBBIE: Good morning, your Honor.
17 James MacRobbie of Sylvester & Polednak for the Credit Suisse,
18 Cayman Islands Branch, and also present with me in the
19 courtroom is Ray Naguiat of Skadden, Arps, Slate, Meagher
20 & Flom.

21 MR. GERSON: Good morning, your Honor. Philip Gerson
22 on behalf of Clark County.

23 THE COURT: Okay.

24 MR. NITZ: Good morning, your Honor. Dana Nitz on
25 behalf of T.I. Residential.

1 MR. HARRIS: Carol Harris on behalf of
2 in re Kitec Fitting Class Plaintiffs.

3 THE COURT: All right. Thank you. Okay.
4 I guess Mr. Derry (sic).
5 (Colloquy not on the record.)

6 MR. DUBLIN: Good morning, your Honor. Again, for
7 the record, Phil Dublin, Akin, Gump, on behalf of the
8 First Lien Steering Committee.

9 Your Honor, we're here today on the continued hearing to
10 consider confirmation of the First Lien Steering Committee's
11 proposed plan of reorganization for the debtors.

12 THE COURT: I apologize for messing up your name. I
13 got the wrong city.

14 MR. DUBLIN: As directed by the Court at the last
15 hearing, on last Friday, January 15th, the First Lien Steering
16 Committee served on among other parties Stanley Consultants and
17 counsel for the Kitec class plaintiffs a proposed amended
18 voting report together with an amended declaration in support
19 of the tabulation of votes in connection with the plan.

20 As the Court may recall, the First Lien Steering Committee
21 is seeking to enforce paragraph 51 and a related provision that
22 was Exhibit 2 to the motion, the solicitation-procedures
23 motion, which are the solicitation and tabulation procedures.

24 Pursuant to that provision, your Honor, the First Lien
25 Steering Committee reserved the right with respect to any

1 unliquidated or unknown claim to be able to notwithstanding the
2 amounts of a vote that was set forth in any ballot to
3 retabulate and recalculate that vote at \$1 for purposes of
4 calculating the dollar threshold necessary under 1126(c) for
5 purposes of tabulating votes to accept or reject a plan of
6 reorganization.

7 Your Honor, we obviously did in accordance with your order
8 provide that necessary service. Two pleadings were filed in
9 connection with the notice, one by the counsel for the class
10 plaintiffs which stated that they have no objection and support
11 confirmation of the plan and one by Stanley Consultants which
12 as your Honor may recall was present at the hearing last week.

13 Stanley Consultants has taken issue with the proposed
14 voting and tabulation report on two primary grounds. The first
15 is that pursuant to Bankruptcy Rule 3018 an additional hearing
16 is necessary in order to determine what amount their claim
17 should be considered at for purposes of tabulating votes to
18 accept or reject the plan. Your Honor, the First Lien Steering
19 Committee disagrees with that assertion.

20 As the Court may recall, the motion that was filed by the
21 First Lien Steering Committee for approval of the disclosure
22 statement was brought under Bankruptcy Rule 3018 and in
23 connection with those procedures made clear to the parties that
24 to the extent a claim was unliquidated or unknown the claim
25 would be subject to tabulation and calculation in the amount --

1 THE COURT: Well, no. Wait. Let's --

2 MR. DUBLIN: -- of 1 --

3 THE COURT: Let's read the exact language and tell me
4 again --

5 MR. DUBLIN: Sure.

6 THE COURT: -- where I can find this and just I
7 happen to have the amended certificate which attaches
8 everything, so point me to the page and the exhibit number in
9 that.

10 MR. DUBLIN: Okay. Sure. It's Docket No. 503 is the
11 solicitation-procedures motion.

12 THE COURT: So it's not in this exhibit, then.

13 MR. DUBLIN: There was Exhibit 2 to the motion is
14 entitled --

15 THE COURT: No. I'm --

16 MR. DUBLIN: -- solicitation --

17 THE COURT: I'm --

18 MR. DUBLIN: -- procedures.

19 THE COURT: I'm trying to so that I don't have to
20 look at everything. I'm looking at, what, Docket 931 which is
21 the purported certificate of service. Oh, solicitation
22 procedures, Exhibit C. Okay. Here we go. So we're looking
23 at --

24 MR. DUBLIN: It's paragraph 51 of the
25 solicitation-procedures motion, your Honor.

1 THE COURT: All right. But what about in the actual
2 order --

3 MR. DUBLIN: Well, the order --

4 THE COURT: -- and the procedures.

5 MR. DUBLIN: The order approves the motion, and the
6 exhibit --

7 THE COURT: Okay.

8 MR. DUBLIN: -- that was attached --

9 THE COURT: But you attached solicitation procedures.

10 MR. DUBLIN: Okay. So that --

11 THE COURT: All right.

12 MR. DUBLIN: -- would be --

13 THE COURT: And that's what was approved. Okay?

14 MR. DUBLIN: Those were approved, yes, your Honor.

15 THE COURT: All right. And it would look like it
16 would be paragraph --

17 MR. DUBLIN: It's (d)(2).

18 THE COURT: There we go. D, right?

19 MR. DUBLIN: D.

20 THE COURT: Okay. Tell me. All right. The claim
21 was timely filed --

22 MR. DUBLIN: Correct, your Honor.

23 THE COURT: -- not subject to objection provided,
24 however, the claims are listed in an unliquidated or known
25 amount.

1 MR. DUBLIN: Correct, your Honor.

2 THE COURT: I can't find in your schedules and
3 statements where these claims were listed.

4 MR. DUBLIN: Okay.

5 THE COURT: So if you could point that out to me, it
6 may well just be I couldn't find it.

7 (Colloquy not on the record.)

8 MR. DUBLIN: In Case No. 09-14844 --

9 THE COURT: Okay. Hold on one second. 09- --

10 MR. DUBLIN: 14844.

11 THE COURT: And that's --

12 MR. DUBLIN: It's Docket No. --

13 THE COURT: -- the --

14 MR. DUBLIN: Docket Entry No. 16.

15 THE COURT: All right. Hold on. No. That's the
16 general partnership.

17 MR. DUBLIN: That's correct.

18 THE COURT: Their claim --

19 MR. DUBLIN: And then we have another --

20 THE COURT: -- is in Arizona.

21 MR. DUBLIN: We also have one in Rhodes Design
22 & Development, your Honor.

23 THE COURT: Okay. But this is the general
24 partnership, 14844.

25 MR. DUBLIN: Correct. And Stanley is listed in there

1 with an unliquidated claim.

2 THE COURT: But it wasn't listed as unliquidated in
3 the Rhodes Arizona case.

4 (Colloquy not on the record.)

5 MR. DUBLIN: Excuse me, your Honor.

6 THE COURT: Well, let me take a recess. Let me tell
7 you what my concern is, and you can tell me if I'm wrong or
8 right. I know --

9 MR. DUBLIN: Sure.

10 THE COURT: -- you've ended up substantively
11 consolidating at the end.

12 MR. DUBLIN: Correct.

13 THE COURT: I know they're jointly administered.

14 MR. DUBLIN: Correct.

15 THE COURT: But they're not yet substantively
16 consolidated. Stanley filed their claim in Rhodes Arizona,
17 and, indeed, that's the entity whose assets you're spinning off
18 and releasing all the claims, and they also filed a claim in
19 one other case.

20 In order to fit within (2)(D), they have to have been
21 listed in unliquidated or unknown amounts. So the first
22 question, were they listed in those two cases I mentioned.

23 MR. DUBLIN: Um-h'm.

24 THE COURT: Were they listed unknown or unqualified?
25 And if they weren't, if you claim they were listed in some

1 other case, how does that meet the requirements of this?

2 MR. DUBLIN: Right. They also filed an unliquidated
3 claim, your Honor.

4 THE COURT: But it doesn't say that. It says are
5 listed in an unliquidated or unknown amount.

6 MR. DUBLIN: Correct.

7 THE COURT: Okay. So they put a specific amount in
8 their claim.

9 MR. DUBLIN: They put a specific dollar amount on the
10 cover page, your Honor. But into the attachments to support
11 their claim, they set forth claims for breach of contract,
12 unjust enrichment, and quantum meruit.

13 Claims for unjust enrichment and quantum meruit in and
14 of themselves pursuant to applicable law are unliquidated
15 claims.

16 THE COURT: Well --

17 MR. DUBLIN: In --

18 THE COURT: -- but --

19 MR. DUBLIN: In addition, your Honor --

20 THE COURT: -- that's not what it says. You've got
21 to live and die by your solicitation procedures. Okay? So I
22 want you to tell me where they fit within your solicitation
23 procedures such that we can tabulate in a dollar by a reference
24 to exactly what you've said.

25 I understand what you're saying, but that's not what your

1 solicitation procedures said. You guys chose them. You wrote
2 them.

3 MR. DUBLIN: Correct, your Honor.

4 THE COURT: So do you want a chance to look at the
5 schedules to double-check all that?

6 MR. DUBLIN: Yes, please.

7 THE COURT: Okay.

8 MR. DUBLIN: Thank you.

9 THE COURT: Sure.

10 (Colloquy not on the record.)

11 THE CLERK: All rise.

12 (Recess at 09:46:46 a.m.)

13 (Court reconvened at 10:38:40 a.m.)

14 THE CLERK: Bankruptcy court is back in session.

15 (Colloquy not on the record.)

16 THE COURT: Be seated. Okay.

17 (Colloquy not on the record.)

18 MR. DUBLIN: For the record, Phil Dublin, Akin, Gump,
19 on behalf of the First Lien Steering Committee. Your Honor,
20 thank you for the opportunity for a recess to address your
21 concerns. I have a response to your concerns.

22 THE COURT: Okay.

23 MR. DUBLIN: As you noted pending today is the plan
24 which is premised on the substantive consolidation of the
25 debtor's estates.

1 Included in the exhibit which sets forth the solicitation
2 procedures is paragraph 4. If I may direct your attention to
3 paragraph 4?

4 THE COURT: 4 of the solicitation procedures?

5 MR. DUBLIN: Yes, sir (sic) -- ma'am.

6 THE COURT: Okay.

7 MR. DUBLIN: Yes, ma'am.

8 THE COURT: All righty.

9 MR. DUBLIN: It is entitled special provisions
10 related to substantive consolidation.

11 THE COURT: Um-h'm.

12 MR. DUBLIN: That provision if I may read it,
13 your Honor, "The plan is predicated on the substantive
14 consolidation of the estates into a single consolidated estate
15 for all purposes associated with confirmation and consummation
16 of the plan.

17 Consequently, when tabulating voting results assuming
18 substantive consolidation, all ballots shall be counted as if
19 filed against a single consolidated estate.

20 And any obligation of any of the debtors and all
21 guarantees thereof by or enforceable against any other debtors
22 and any joint and several liability of the debtors will be
23 treated as a single obligation in the amount of the obligation
24 of the primary obligor."

25 Your Honor, the First Lien Steering Committee's position

1 is that since you are considering the plan on a
2 substantively-consolidated basis and the votes of any creditors
3 on a substantively-consolidated basis one would look at the
4 schedules and the liabilities on a consolidated basis and
5 because we have listed Stanley or the -- sorry.

6 Since the debtors have listed Stanley Consultants in their
7 schedules not once, but twice in connection with what would be
8 a consolidated estate as unliquidated claims, that that then
9 takes us back to the provisions of the solicitation procedures
10 that we discussed, previously, at (2)(D). Sorry.

11 THE COURT: So to be clear, you did not list them in
12 the Arizona case or the other case.

13 MR. DUBLIN: They are set forth in the statement of
14 financial affairs as a pending litigation in Arizona because
15 they have sued us in Arizona, but they are not --

16 THE COURT: No. Listed.

17 MR. DUBLIN: -- in the exact schedules --

18 THE COURT: Right.

19 MR. DUBLIN: -- of Arizona.

20 THE COURT: Okay.

21 MR. DUBLIN: Correct. But when we view this as a
22 consolidated estate and the schedules on a consolidated basis,
23 we have an unliquidated claim as set forth in those --

24 THE COURT: Well --

25 MR. DUBLIN: -- consolidated schedules.

1 THE COURT: -- I need to see where. So now that
2 we're back to Rhodes General Ranch (sic), give me what number.
3 What docket number?

4 MR. DUBLIN: I believe that was 16, your Honor.

5 THE COURT: Docket 16. Okay.

6 MR. DUBLIN: I just have a bunch of paper here now,
7 so I just have to flip back through.

8 THE COURT: Okay.

9 MR. DUBLIN: It's a little complicated, the
10 schedules, your Honor, so they are set forth on a schedule.
11 It's attachment (f)(1). It's page 25 of 116.

12 THE COURT: Oh, 25?

13 MR. DUBLIN: It's on page 25 of 116. It's Docket
14 Entry No. 16 --

15 THE COURT: Okay.

16 MR. DUBLIN: -- in Case No. 09- --

17 THE COURT: 25.

18 MR. DUBLIN: -- 14844.

19 THE COURT: Okay.

20 MR. DUBLIN: And then they are the last --

21 THE COURT: Okay.

22 MR. DUBLIN: -- creditor listed.

23 THE COURT: So you've listed them in there as --

24 MR. DUBLIN: Contingent --

25 THE COURT: -- contingent, unliquidated, and

1 disputed --

2 MR. DUBLIN: -- and disputed.

3 THE COURT: -- okay --

4 MR. DUBLIN: And the same, your Honor --

5 THE COURT: -- and unknown. Okay.

6 MR. DUBLIN: And the same, your Honor, in
7 Case No. 09-14846. That's Rhodes Design & Development
8 Corporation, Docket No. 17.

9 THE COURT: And they did file a claim in
10 Rhodes Design, correct?

11 MR. DUBLIN: They filed a claim in both Rhodes Ranch
12 General Partnership and Rhodes Design, your Honor.

13 THE COURT: No. I thought they filed it in Arizona.

14 MR. DUBLIN: That too, three, three claims.

15 THE COURT: Oh, three claims.

16 MR. DUBLIN: Yeah.

17 THE COURT: Okay. So they filed one in Rhodes Ranch,
18 and they filed one -- now, wasn't the order -- okay. And you
19 listed them in -- I'm sorry. They filed a claim in
20 Rhodes Ranch General Partnership.

21 MR. DUBLIN: Yeah. They filed claims in Rhodes Ranch
22 General Partnership, Rhodes Arizona, and Rhodes Design
23 & Development Corporation.

24 THE COURT: Okay. And you clearly have them listed,
25 and they're listed as --

1 MR. DUBLIN: Contingent --

2 THE COURT: -- and unliquidated --

3 MR. DUBLIN: -- unliquidated.

4 THE COURT: -- or unknown, so you clearly
5 (indiscernible) on that one, so it certainly is \$1 in with
6 respect to the claim filed in the general-partnership case.
7 I'm just going through this a step at a time. I'm not --

8 MR. DUBLIN: Sure.

9 THE COURT: I'm not deciding the other issue, yet,
10 and the other case --

11 MR. DUBLIN: I understand --

12 THE COURT: -- is --

13 MR. DUBLIN: -- your Honor.

14 THE COURT: What's Design's number?

15 MR. DUBLIN: Rhodes Design & Development Corporation
16 is Case No. 09- --

17 THE COURT: Um-h'm.

18 MR. DUBLIN: -- 14846.

19 THE COURT: I'm sorry. 14846?

20 MR. DUBLIN: Yes, ma'am.

21 THE COURT: Okay. And --

22 MR. DUBLIN: Docket No. 17.

23 THE COURT: Okay. Okay.

24 (Colloquy not on the record.)

25 MR. DUBLIN: And it is page 26 of 149 --

1 THE COURT: Okay. Hold on.

2 MR. DUBLIN: -- the third creditor listed --

3 THE COURT: Okay.

4 MR. DUBLIN: -- on the chart.

5 THE COURT: 26.

6 (Colloquy not on the record.)

7 THE COURT: Okay. And it's definitely there, so they
8 have this \$1 claim in Design, and that only leaves -- how much
9 was their fraud claim in Arizona Properties?

10 MR. DUBLIN: About 3.4 mil, your Honor.

11 THE COURT: Okay. So that is the only issue, then.
12 All right. So go ahead and finish your argument --

13 MR. DUBLIN: So --

14 THE COURT: -- as to --

15 MR. DUBLIN: So my argument, your Honor, is that when
16 you view -- since the tabulation and the plan is being viewed
17 out on a consolidated basis, you would view the liabilities of
18 the estates on a consolidated basis.

19 And since we have in the consolidated -- if you look at
20 the schedules on a consolidated basis, it listed Stanley
21 Consultants with an unliquidated claim that we were able to
22 then apply the provisions of the solicitation and tabulation
23 procedures in paragraph -- I'm sorry -- (d)(2)(D) to calculate
24 their claim on a consolidated basis at \$1 for purposes of
25 voting on a plan premised on substantive consolidation when you

1 combine paragraph 4 and paragraph (d)(2)(D).

2 THE COURT: Why in the world didn't the debtor list
3 this claim as a creditor to Rhodes Homes Arizona?

4 MR. DUBLIN: Because they are pursuing claims against
5 them at Rhodes Homes Arizona.

6 THE COURT: But there was a counterclaim --

7 MR. DUBLIN: It's --

8 THE COURT: -- April --

9 MR. DUBLIN: No. The debtors sued them, sued --

10 THE COURT: I understand, but there was a
11 counterclaim --

12 MR. DUBLIN: I understand.

13 THE COURT: -- Defendant/Counterplaintiff
14 Stanley Consultants for its counterclaim against --

15 MR. DUBLIN: I understand, your Honor. I would have
16 to defer to debtor's counsel who prepared the schedules --

17 THE COURT: Okay.

18 MR. DUBLIN: -- and who's on the phone.

19 THE COURT: But they were clearly listed as a
20 creditor. I mean, they were clearly sued as a -- Rhodes Homes
21 Arizona was clearly sued by Stanley litigation,
22 Stanley Engineering.

23 MR. DUBLIN: And that's another issue, your Honor, is
24 that Stanley Engineering is the entity, and Stanley Consultants
25 is the creditor, so it's not actually the right entity.

1 THE COURT: Okay. You're right. Stanley Consultants
2 filed the counterclaim, and the claim was filed by
3 Stanley Engineering? I think that's right. No. Excuse me.
4 The claim was filed by Stanley -- excuse me --
5 Stanley Consultants.

6 MR. DUBLIN: I'm sorry, your Honor.

7 THE COURT: Oh, okay. You've listed
8 Stanley Consultant and Stanley -- you listed
9 Stanley Consultant. That's right.

10 MR. DUBLIN: Correct.

11 THE COURT: No. The claim was filed by
12 Stanley Consultants.

13 MR. DUBLIN: Yes. I believe I misspoke.

14 THE COURT: Okay. All right. Go ahead. I apologize
15 for interrupting.

16 MR. DUBLIN: No. That --

17 THE COURT: But I --

18 MR. DUBLIN: No. That's okay. I --

19 THE COURT: -- keep --

20 MR. DUBLIN: I appreciate the opportunity to try to
21 explain. So based on our view that we must look at everything
22 on a consolidated basis, and we have what would be a
23 consolidated schedules listed them with unliquidated claims and
24 because the claims are unliquidated just based on the face of
25 the attachments to Stanley's objection today. If you review,

1 if you turn to page 32 of their objection which is Docket Entry
2 No. 942 --

3 THE COURT: Um-h'm.

4 MR. DUBLIN: I'm sorry, your Honor. You can actually
5 turn to page -- it's the same language on page 30 --

6 THE COURT: Of what?

7 MR. DUBLIN: -- of their objection. If you want, on
8 the bottom of the pages, there is the handwritten. It looks
9 like handwritten-in numbers.

10 THE COURT: Oh, all right. Well, no. That's the
11 complaint.

12 MR. DUBLIN: This is --

13 THE COURT: Page 30 is the complaint.

14 MR. DUBLIN: -- their answer and counterclaim which
15 they attach as an exhibit.

16 THE COURT: Right.

17 MR. DUBLIN: And this is --

18 THE COURT: Uh-huh.

19 MR. DUBLIN: I'm going to use this to prove to
20 your Honor that their claims are -- even they acknowledge that
21 their claims are unliquidated because they seek as I mentioned
22 earlier this morning three counts, breach of contract as
23 referenced on page 30 --

24 THE COURT: Well --

25 MR. DUBLIN: -- of their --

1 THE COURT: -- where does that fit within the
2 solicitation procedures?

3 MR. DUBLIN: The issue is whether -- we've listed
4 them as unliquidated. They're asserting that notwithstanding
5 the fact that we've listed them as unliquidated they do not
6 have unliquidated claims in their objection.

7 THE COURT: Okay.

8 MR. DUBLIN: So I am showing you how they had
9 actually attached documentation evidencing or admitting that
10 they have unliquidated claims --

11 THE COURT: Okay.

12 MR. DUBLIN: -- notwithstanding what they assert.

13 THE COURT: I see.

14 MR. DUBLIN: And that is they have asserted three
15 counts in their counterclaim in the pending state court
16 litigation and no set dollar amount.

17 THE COURT: Well, how about paragraph 12 of Count I?

18 MR. DUBLIN: I'm sorry?

19 THE COURT: How about paragraph 12 of Count I on
20 page 30?

21 MR. DUBLIN: Right. That they say that the Defense
22 are in default of their obligations under the contracts.

23 THE COURT: Well, paragraph 12, for damages in excess
24 of two-million- --

25 MR. DUBLIN: Right. That's --

1 THE COURT: -- five-hundred- --

2 MR. DUBLIN: Right.

3 THE COURT: -- eighty-four-thousand-
4 nine-hundred-and-ninety-four-dollars-and-eighty-one cents.

5 MR. DUBLIN: Right. But what I'm saying is they're
6 saying in excess of that amount.

7 THE COURT: Oh --

8 MR. DUBLIN: The exact amount --

9 THE COURT: -- come on, Counsel. When somebody puts
10 that 81 cents --

11 MR. DUBLIN: The exact amount of which will be proved
12 at trial, and they've also sought unjust enrichment and
13 quantum meruit claims which pursuant to applicable law --

14 THE COURT: I can appreciate that.

15 MR. DUBLIN: -- are defined --

16 THE COURT: But don't sit here --

17 MR. DUBLIN: -- as unliquidated claims.

18 THE COURT: -- with a straight face and telling me
19 that when you seek damages of 2,584,994.81 plus prejudgment
20 interest calculated out plus postjudgment interest is an
21 unknown amount.

22 MR. DUBLIN: Well, that's the amount that they have
23 asserted, your Honor, on their invoices as to what is owed, but
24 they are asserting that even if they're wrong on what the
25 amount is that they put on their invoices they are seeking

1 quantum meruit and unjust-enrichment claims for what the actual
2 amount may be, an actual amount that cannot be determined until
3 there is a trial on the merits of these claims. We have
4 pending litigation brought by the debtor entities against
5 Stanley and then Stanley in counterclaims.

6 THE COURT: I guess what's so frustrating it would
7 have been so easy for you all to have amended your schedules to
8 include the Arizona, Rhodes Arizona. It would have been so
9 easy for you to file an objection to claim, and you didn't do
10 any of that.

11 MR. DUBLIN: I understand that issue, your Honor.
12 But based on the arguments today, I believe that there is
13 sufficient support that we have on a consolidated basis,
14 scheduled unliquidated claims, and, therefore, Stanley's vote
15 on a consolidated basis is properly counted for at \$1.

16 THE COURT: Is claim defined in this procedure
17 section?

18 MR. DUBLIN: I --

19 THE COURT: Oh, it's --

20 MR. DUBLIN: Claim is defined in the plan as defined
21 in the bankruptcy code, your Honor.

22 THE COURT: Okay. So claim means any right to
23 payment contained (indiscernible). Doesn't the original
24 case-management order require everybody to file their proofs of
25 claim in the case in which they allege it to be the person

1 against whom it alleges to be?

2 MR. DUBLIN: The proofs of claim, yes. That's
3 correct.

4 THE COURT: So how does 4 get you around the problem
5 that --

6 MR. DUBLIN: Because we are doing everything for
7 purposes of plan -- everything for plan purposes is being done
8 on a consolidated basis as referenced in paragraph 4.

9 Therefore, we look at all of the liabilities on a
10 consolidated basis and the schedules on a consolidated basis.
11 And a consolidated basis, the schedules set forth the claims of
12 Stanley --

13 THE COURT: Well --

14 MR. DUBLIN: -- in unliquidated amounts.

15 THE COURT: -- why wouldn't the converse be true?
16 Because you didn't list them as unknown or litigated in the
17 Arizona case, why shouldn't claim count in all three cases,
18 then?

19 MR. DUBLIN: Because we are looking at a single
20 state. And when you consolidate the schedules on a
21 consolidated basis, we have them scheduled in the consolidated
22 schedules --

23 THE COURT: But you don't conversely.

24 MR. DUBLIN: -- as an unliquidated.

25 THE COURT: You don't in the Arizona case.

1 MR. DUBLIN: But we are not looking at the plan --

2 THE COURT: I understand.

3 MR. DUBLIN: -- on an entity-by-entity --

4 THE COURT: But my point is --

5 MR. DUBLIN: -- basis.

6 THE COURT: -- why is it --

7 MR. DUBLIN: Because --

8 THE COURT: Well --

9 MR. DUBLIN: Because the procedures contemplate
10 everything being done on a substantively-consolidated basis.

11 THE COURT: Right. But the converse is they weren't
12 listed in the Arizona case, so why don't you look to that one
13 to say where it's consolidated, so, ergo, it all counts as
14 opposed to excising out the general partnership and the other
15 claim?

16 MR. DUBLIN: Well, I am not removing -- if I take all
17 of the schedules together and if I do it on a consolidated
18 basis, I would take all of the liabilities of each entity.

19 And I would take one -- if I filed one consolidated
20 schedule, then Stanley would be listed on that consolidated
21 schedule --

22 THE COURT: But it wasn't.

23 MR. DUBLIN: -- on a -- if I may finish, your Honor?
24 Because they are scheduled in two of the debtor entities with
25 unliquidated claims on a consolidated-schedule basis, they

1 would be listed with an unliquidated claim.

2 THE COURT: But why isn't --

3 MR. DUBLIN: We would not be able --

4 THE COURT: -- the converse true?

5 MR. DUBLIN: Because we would not be able -- if you
6 know that unliquidated claims exist at certain entities, you
7 cannot pursuant to applicable bankruptcy law exclude them from
8 the schedules. You can't. If you know that you have an
9 unliquidated liability with respect to an entity --

10 THE COURT: Right.

11 MR. DUBLIN: -- you can't just leave them off.

12 THE COURT: But you did. You did in the
13 Arizona Properties case.

14 MR. DUBLIN: Yes. That would be a fair point,
15 your Honor.

16 THE COURT: You did. Okay. Any other? I've been
17 interrupting you, and I apologize. Any other argument in this
18 regard?

19 MR. DUBLIN: I would just note that with respect to
20 the first portion of their objection with respect to
21 Bankruptcy Rule 3018 that the solicitation procedures itself
22 was a 3018 motion filed by the First Lien Steering Committee.

23 In the statutory predicate and legal predicates, it is
24 Bankruptcy Rule 3018 is included. Stanley was, therefore, on
25 notice that its claim could be calculated in the amount of \$1.

1 That the creditor itself never filed its own 3018 motion in
2 advance of the confirmation hearing.

3 THE COURT: Okay. All right. Ms. Marshall.

4 (Colloquy not on the record.)

5 MS. MARSHALL: Thank you, your Honor.

6 Janiece Marshall on behalf of Stanley Consultants. Your Honor,
7 we would incorporate the arguments that you've made questioning
8 the problems with the solicitation procedures, the disclosure
9 statement.

10 We filed three proofs of claim. We filed it against
11 Rhodes Arizona. We also filed against Rhodes Design and
12 Rhodes General Partnership.

13 The Rhodes Arizona claim is over 3.4 million. The
14 documents that we attached to our objection to this recount of
15 the tabulation, our answer, and our counterclaims, we had
16 services that we performed pursuant to written agreements with
17 these three entities, and we were not paid for those services.

18 Mr. Rhodes filed a preemptory lawsuit in Arizona when he
19 didn't pay, and we started requesting collection and collection
20 of the amounts owed. He then crafted this litigation against
21 us.

22 And the basis of our litigation is just to collect the
23 money that we are owed from the services that we provided
24 pursuant to the contracts.

25 Our claims are not unliquidated. We filed the amounts

1 of our claims calculated as its time of the proofs of the
2 claims.

3 We note that the documents that we attached are in
4 addition to listing the dollar amount up to the 81 cents that
5 was owed at that time I believe is from 2008.

6 We are now into 2010, plus the fact that we listed at that
7 time that we were owed two-and-a-half-million dollars for the
8 services provided.

9 And, in fact, the contracts, the original contracts, were
10 12,000,000. They paid us some of the money, but not all the
11 money, and that's the basis of the Arizona litigation.

12 Our claims are not unliquidated. They're not contingent.
13 We have specific contracts amount that they have not paid, and
14 we attached to and referenced in the declaration attached to
15 our objection.

16 In our objection to the disclosure statement, we attached
17 the declaration of Dave Fronan (phonetic) who goes through and
18 provides what the services were performed for and the amounts
19 that were owed which is proof of the amount of our claim.

20 We also object, your Honor, to the recounting of the
21 tabulation. The First Lien Steering Committee made the
22 decision of this is how we're going to tabulate it the first
23 time.

24 They made the choice to count the dollar amounts. Now
25 they want to recount, and Stanley doesn't think their claims

1 should be reduced for any purposes.

2 We did perform the services in good faith pursuant to
3 written agreements. We filed our proofs of claim. They were
4 never objected to.

5 We raised the fact that they were never objected to when
6 we filed our objection to the disclosure statement months ago
7 and pointed out then that they had never objected to any of our
8 claims and brought it to their attention at that time, and they
9 still haven't done it.

10 The cases haven't been substantively consolidated, and
11 they didn't list the Rhodes Arizona claim as unliquidated;
12 therefore, their procedures that they set forth have not been
13 complied with.

14 And Stanley requests that the original tabulation and even
15 this new tabulation shows that the C-1 class rejected this
16 plan, and we request that Stanley's claims and its votes be
17 counted.

18 THE COURT: Okay.

19 MS. MARSHALL: Thank you, your Honor.

20 THE COURT: All right. Reply.

21 MR. DUBLIN: Your Honor, I'll just restate my
22 arguments before that the procedures specifically set forth
23 that the whole solicitation process is being done on a
24 substantively-consolidated basis.

25 And, therefore, the liability should be viewed on the

1 substantively-consolidated basis with reference back to the
2 schedules.

3 I would also like to note that the Rhodes Arizona entity
4 is not a -- even if you take the 3.4-million-dollar number that
5 they assert, it is not the amount that they put on their
6 ballot.

7 They put in excess of 4.6 million dollars on the ballot
8 which is not the amount that's assertable against or that they
9 assert is even owed by the Rhodes Homes Arizona entity.

10 Rather, that amount based on the only information that we
11 have seen would be either 2.5 as they reference in their
12 amended complaint or without support the 3.4 million.

13 THE COURT: Well, it doesn't make any difference
14 whether it's 2.8 (sic) or 3 point whatever. That doesn't get
15 you --

16 MR. DUBLIN: Well, at 2.5, your Honor, Kitec today
17 would vote in favor of the plan, and we would then seek to
18 allow their claim for voting purposes in the amount of their
19 proof of claim as opposed to reducing it to \$1.

20 THE COURT: But how does that comport with your
21 procedures? It doesn't, right?

22 MR. DUBLIN: To allow it if they vote in -- if they
23 switch their vote to vote --

24 THE COURT: No. How does --

25 MR. DUBLIN: -- in favor?

1 THE COURT: How can you reduce -- let's assume you
2 didn't have the problem of the listing whatever. Let's assume
3 it was just a straight you didn't like this amount. How under
4 your procedures could you do that? You can't, right?

5 MR. DUBLIN: Well, I believe, your Honor -- and I'm
6 waiting on confirmation -- that the procedure provides that in
7 paragraph D that it's the amount on a proof of claim. Now, the
8 question --

9 THE COURT: Right.

10 MR. DUBLIN: The amount on the proof of claim that
11 was filed in the Arizona entity is 3.4; however, the documents
12 attached to it include different numbers.

13 THE COURT: And --

14 MR. DUBLIN: So it's actually determined what the
15 amount is that's included in the proof of claim is not readily
16 discernible.

17 THE COURT: But it says the amount contained in a
18 proof of claim.

19 MR. DUBLIN: Right. But the proof of claim includes
20 not just the form, but everything that's filed with it.

21 THE COURT: Right. But 2.8 million plus interest
22 probably equals 3 point whatever.

23 MR. DUBLIN: If they're entitled to interest,
24 your Honor.

25 THE COURT: Why wouldn't they be?

1 MR. DUBLIN: It's a state court litigation issue to
2 the extent --

3 THE COURT: Oh --

4 MR. DUBLIN: -- they're owed anything --

5 THE COURT: -- I can't imagine --

6 MR. DUBLIN: -- subject --

7 THE COURT: -- any state court --

8 MR. DUBLIN: -- to the --

9 THE COURT: -- wouldn't allow you post the
10 contract --

11 MR. DUBLIN: Subject to the terms --

12 THE COURT: -- because it would be --

13 MR. DUBLIN: -- of the contract --

14 THE COURT: Yeah.

15 MR. DUBLIN: -- wherein there's nothing there --

16 THE COURT: I'm sure there's interest --

17 MR. DUBLIN: -- that it would be federal --

18 THE COURT: -- in the contract.

19 MR. DUBLIN: They're seeking a statutory-judgment
20 rate.

21 THE COURT: Okay.

22 MR. DUBLIN: And the question is whether that would
23 be the right rate or it would be a federal-judgment rate which
24 is something closer to half a percent.

25 THE COURT: And point me again to the provision --

1 MR. DUBLIN: Paragraph --

2 THE COURT: -- and I'm not disagreeing -- the
3 provision that says that you can retabulate after you've
4 tabulated --

5 MR. DUBLIN: Well, the --

6 THE COURT: -- that --

7 MR. DUBLIN: The --

8 THE COURT: -- you can amend that.

9 MR. DUBLIN: The procedures provide -- we were
10 authorized by the Court to send out a new retabulation --

11 THE COURT: I understand that.

12 MR. DUBLIN: -- at --

13 THE COURT: And I --

14 MR. DUBLIN: -- the last hearing.

15 THE COURT: I said to do that, and I believe you told
16 me the authority you could do that before. Just tell me again,
17 so that I've got one complete record what that authority was
18 for allowing you to retabulate after you had tabulated or is it
19 just the --

20 MR. DUBLIN: Well, I don't believe it -- it's
21 reliance on (d)(2)(D) --

22 THE COURT: Just reliance on (d)(2).

23 MR. DUBLIN: -- and nothing that prohibits it.

24 THE COURT: Okay.

25 MR. DUBLIN: Correct, your Honor.

1 THE COURT: I see. Okay. All right.

2 Well, I find that you have not met the requirements for
3 accepting class of unsecured creditors because the
4 Stanley Consultants claim in the amount asserted in the Arizona
5 entity must be counted in accordance with the procedures.

6 First of all, I do agree with the secured lenders that the
7 3018 procedure which normally would follow which would be the
8 objection to claim followed by allowance or temporary allowance
9 has been supplanted by these procedures, so we live and die by
10 those procedures.

11 If somebody had brought these to my attention in the
12 beginning, would I have adopted them? M'mm, maybe, maybe not,
13 but that's beside the point. We live and die by these
14 procedures, so that cuts both ways.

15 I do find it appropriate to retabulate in accordance with
16 those procedures because, in essence, if the procedures say the
17 claims should be established as X, and the valid agent didn't
18 do that, then, obviously, it's appropriate to retabulate, but
19 the question is do we retabulate this case.

20 And (d)(2) says, "In tabulating votes, the following
21 hierarchy shall be used to determine the claim amount
22 associated with each holder's vote regardless of the amount
23 that the holder may write in on the ballot." All right.

24 A is not applicable. We don't have an allowed claim,
25 capital A. We don't have a temporary allowance. We don't have

1 a settlement amount relying on D.

2 And then that says, "The claim amount contained in a proof
3 of claim that has been timely filed by the bar date" --
4 nobody's suggesting it wasn't timely filed by the bar date --
5 "that is not the subject of objection or has not been withdrawn
6 provided" -- and I find that you must count each of the
7 entities in which the claimant has filed a proof of claim, and
8 I'll relate that back to your argument in just a minute --
9 "provided, however, the ballots cast by holders whose claims
10 are listed in unliquidated or unknown amounts that are not the
11 subject of objection will count for satisfying numerosity and
12 will count as claims in the amount of \$1 for purposes of
13 satisfying the dollar amount."

14 So Stanley Consultants claimed that it filed in the
15 Partnership case and the Design case the schedules. They were
16 listed as unliquidated or unknown, and so those claims must
17 each be reduced to \$1.

18 However, the problem with the Arizona case was that they
19 were never listed in the schedules at all let alone listed as
20 unknown, contingent, or unliquidated.

21 I don't think you're -- I find that you are not saved by
22 the substantive-consolidation provision because on one hand
23 while that sounds appealing my argument is, wait a minute, why
24 is it you can when you're doing substantive consolidation count
25 the ones that count as \$1 and don't count the ones that the

1 creditor or debtor didn't do right.

2 And the problem is as I said the debtor slash creditors
3 had all these things in their power, and you chose not to do
4 them, and we are talking here about cram-down.

5 We are talking about taking away a creditor's rights to
6 payments, and the issue we now face is whether or not you can
7 still cram down.

8 And as I indicated before, I am not willing to say that
9 despite your assertion that no junior creditor or class is
10 receiving or retaining anything on account of the plan that --
11 while you say that, that is true in the context of cram-down
12 because Rhodes entities are receiving all of the Arizona assets
13 free and clear of all claims, and the debtor takes the claims.

14 Conversely, I'm not willing to say you don't meet
15 cram-down because you may be able to demonstrate to me that,
16 yes, it is not on account of -- they're not receiving this on
17 account of their claim. They're receiving it either through a
18 new-value exception, a settlement, whatever.

19 My point is you now need to go to step two. I find that
20 you haven't met the acceptance provisions because of the vote
21 of Stanley still -- even when we count Kitec, it doesn't meet
22 the test. We have a claim of \$3,000,000 that was filed. Let
23 me go back.

24 This argument about whether it truly is unknown or known
25 to me is beside the point. We're living again, living and

1 dying, by what you said in your procedures. That's kind of
2 beside the point whether or not it's known or unknown. Because
3 they filed a proof of claim, you've got to count that in the
4 amount they filed in the proof of claim.

5 Your way to avoid that was to file an objection at least
6 to, you know, an objection to disallow it to some lower amount,
7 for example. That wasn't done. I know you worked hard on this
8 plan, but that's we all live and die by the provisions of 1129.

9 Now, tell me what you want to do, how long you would like
10 to have, and then I guess, of course, your other option is to
11 now file an objection and go through an estimation claim I
12 suppose, I assume. You tell me how long you want to brief
13 these issues, and when do you want to come back on this?

14 MR. DUBLIN: I would like to as soon as possible,
15 your Honor. If we could file a brief by next Wednesday and
16 have responses due sometime the following week and then in the
17 middle of the following week and then have a hearing at the end
18 of it, so that would be either the 11th or the 12th of
19 February.

20 THE COURT: Okay. I could let you have
21 February 11th.

22 MR. DUBLIN: That will be fine with us, your Honor.

23 THE COURT: Okay. So February 11th for argument on
24 cram-down and evidence if evidence is required.

25 MR. DUBLIN: Correct, your Honor.

1 THE COURT: So we --

2 MR. DUBLIN: Understood.

3 THE COURT: We would leave that whole day. I think
4 you should indicate in your pleading if you intend to use
5 evidence any declarations that you intend to use.

6 And then in the opposition, if any, Ms. Marshall would
7 have to let you know whether or not she seeks to have that
8 witness available for cross-examination.

9 MR. DUBLIN: Okay, your Honor. When would you -- if
10 we file our brief on this issue by next Wednesday with
11 responses due the following Tuesday be sufficient, so that we'd
12 be able to prepare for a hearing --

13 THE COURT: Yes.

14 MR. DUBLIN: -- Wednesday for a hearing on Thursday?

15 THE COURT: Um-h'm. Well, wait. Let's see. Next
16 week is the -- ooh, I'd like a little longer because I need to
17 do some research. I'm sorry. I've lost a whole week here. My
18 month went faster than I thought it did.

19 Your brief is Wednesday. Oh, if I have your brief, that
20 gets me -- because that's the main thing is seeing how you tee
21 up --

22 MR. DUBLIN: Understood --

23 THE COURT: -- the issue.

24 MR. DUBLIN: -- your Honor.

25 THE COURT: And I understand the defects, so that's

1 fine. That gives me -- if you file it by next Wednesday, that
2 gives me enough time to be ready for the hearing on Thursday.
3 Hopefully, I'll give you an answer that day.

4 MR. DUBLIN: Oh, hopefully.

5 THE COURT: But, of course, I reserve the right that
6 if it's more complicated --

7 MR. DUBLIN: Understood, your Honor.

8 THE COURT: -- to consider it. All right.

9 MR. DUBLIN: So it would be the brief, our brief,
10 filed by next Wednesday.

11 THE COURT: Correct.

12 MR. DUBLIN: Responses due by the following Tuesday.

13 THE COURT: Yes.

14 MR. DUBLIN: And we'll send out the appropriate
15 notice.

16 THE COURT: Okay.

17 MR. DUBLIN: Thank you, your Honor.

18 THE COURT: Thank you very much.

19 MS. CHO: Your Honor, what time is --

20 MR. DUBLIN: Oh.

21 MS. CHO: Pardon me. It's Shirley Cho on behalf of
22 the debtors on the phone.

23 THE COURT: 9:30.

24 MS. CHO: Thank you.

25 MR. DUBLIN: Thank you, your Honor.

1 THE COURT: And you have all day.

2 MR. DUBLIN: Thank you.

3 THE COURT: All right. Thank you.

4 (Colloquy not on the record.)

5 THE CLERK: All rise.

6 (Court concluded at 11:10:12 a.m.)

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1 I certify that the foregoing is a correct transcript
2 from the electronic sound recording of the proceedings in
3 the above-entitled matter.
4
5

6 /s/ Lisa L. Cline

02/03/10

7 Lisa L. Cline, Transcriptionist

Date